IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

CRL.A.No. 987 of 2004

SC.317/2003 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA
CP.7/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THODUPUZHA

.....

APPELLANT:

LUKKA @ KOCHIKKA, CONVICT NO.8406,
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT:

STATE OF KERALA REP. BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

Crl.A.No. 987 of 2004

JUDGMENT

Balachandran, J.

Convict No.8604 Luka @ Kochikka has preferred this appeal from the Central Prison, Thiruvananthapuram challenging the conviction and the sentence of life imprisonment awarded to him in S.C.No.317/03 by the Sessions Division, Thodupuzha. Since the appellant could not engage a Lawyer, Advocate Sri.Grashious Kuriakose was appointed as State Brief to argue the appeal on his behalf.

2. The appellant was charge sheeted by the Circle Inspector of Police, Thodupuzha in Crime No.148/01 of Karimkunnam Police Station for an offence punishable under Section 302 IPC on the allegation that on account of animosity that he entertained towards his wife, the now deceased Aleykutty @ Chinnamma, he committed her murder at

about 10 a.m. on 16.10.2001 within the middle western room of his house bearing Door No.267 of Ward No.II, Karimkunnam Panchayat, Nadukandam Bhagom, Thattarathattu Kara in Karimkunnam Village strangulating her by tieing a rope around her neck and pulling the rope forcibly, tieing her to a cot inside the said room and also beating on her head 3-4 times with a stick.

3. The appellant pleaded not guilty when he was questioned by the Sessions Judge with reference to the charge and consequently, a trial of the case was conducted. Considering the evidence adduced at trial, which consisted of oral evidence of PWs 1 to 17, documentary evidence Exhibits P1 to P14 and MOs 1 to 4 and questioning the accused under Section 313 Cr.P.C., the trial Judge found the appellant guilty of the offence punishable under Section 302 IPC, convicted him thereunder and sentenced him as aforesaid, as the appellant did not want to adduce any evidence in defence.

4. Heard the arguments of the counsel on State Brief on behalf of the appellant and the Public Prosecutor for the respondent State.

5. The Sessions Judge has, on the basis of the evidence of witnesses as regards the death of the deceased, Exhibit P14 Inquest Report proved by PW15 and the evidence tendered by PW10, the Assistant Professor of Forensic Medicine, Medical College, Kottayam, who conducted autopsy on the body of deceased Aleykutty @ Chinnamma and issued Exhibit P9 postmortem certificate, come to the conclusion that death of the deceased is a case of homicide and that she died of ligature strangulation. The ante-mortem injuries noted by PW10 and recorded by him in Exhibit P9 postmortem certificate and deposed to by him before the Sessions Court are the following:

> **"B. <u>INJURIES (Ante-Mortem)</u>**
>
> 1. Pressure abrasion 34 cm. long, horizontally placed on the front and

sides of the neck with a discontinuity of 3 cm. on the back of neck. It was situated 9 cm. below the right ear (1 cm. broad), 8.5 cm. behind the chin (1 cm. broad), 8 cm. below the left ear (0.8 cm. broad) and 9.4 cm. below the occiput (0.8 cm. broad). Flap dissection of the neck was done under a blood less field and the subcutaneous tissues underneath the pressure abrasions showed infiltration of blood and corresponding to the ligature mark the muscles of the neck showed echymosis at several places. The laryngeal mucosa showed hemorrhage. The hyoid bone, thyroid cartilage and the cervical vertebrae were intact.

2. Lacerated wound 3.5 x 2 x 1 cm. obliquely placed on the back of head 4 cm. below the occiput.

3. Lacerated wound 6 x 1 x 1 cm. obliquely placed on the back of head. Its lower right end was 2 cm. above the occiput.

4. Lacerated wound 4 x 1 x 1 cm. on the back of head just below the occiput.

5. Lacerated wound 2 x 1 x 1 cm. obliquely with its lower left end was 3 cm. outer to the mid line and 6 cm. above the occiput. On dissection the scalp tissue was contused over an area 10 x 6 x 1 cm. involving the occipital region.

6. Abrasion 1 x 0.5 cm. on the left side of the face 2 cm. above the corner of mouth.

7. Abrasion 1 x 1 cm. on the tip of the bridge of nose.

8. Lacerated wound 1 x 1 x 0.3 cm. involving the left upper eyelid.

9. Contused abrasion 4 x 0.5 x 0.5 cm. on the left side of the forehead 5 cm. above the outer end of eyebrow.

C. <u>OTHER FINDINGS</u>:

Air passages congested and contained blood stained mucoid frothy fluid. Lungs were congested and oedematous. Stomach was half full with softened semisolid food particles without any unusual smell, its mucosa normal. Urinary bladder empty. All other internal organs were congested;otherwise appeared normal."

The opinion, as to the cause of death, expressed by PW10 in Exhibit P9 and deposed to by him is that death of the deceased was due to ligature strangulation. He has further deposed that Injury No.1 is sufficient, in the ordinary course of nature, to cause death and that the said injury is

possible to be caused by using MO1 rope. He has also deposed that Injury Nos.2 to 9 are possible to be inflicted by using MO2 stick. He has further denied the suggestion, in cross-examination, that Injury Nos.2 to 9 are possible to be caused in a fall. The evidence of PW10, as regards his opinion as to the cause of death, is not assailed at all by the defence. In the circumstances, the finding of the court below, accepting the evidence of witnesses as regards the death of the deceased, the Inquest Report and the evidence of PW10 that she died of ligature strangulation, that the death of the deceased was a case of homicide is without blemish and we concur with the said finding.

6. The next point for consideration is as to whether it was the accused, who committed murder of his wife, the deceased Aleykutty @ Chinnamma. The death of the deceased has occurred within her house. The occupants of the said house were the deceased, her husband-the appellant/accused and PWs

6 to 8, who are their children. PW6, the elder daughter has given evidence that in their house other than the deceased, the accused, herself, her younger sister Shiji (PW8) and her brother George (PW7) were residing at the relevant time; that her brother had gone for work at 7 a.m. on the date of occurrence and she went for stitching at about 9 a.m. and Shiji had left the house by 9 a.m. to learn computer and that, then, the deceased and the accused alone were in their house. At about 10.30 a.m. she was told by her employer to go to her house informing her that there is some problem in her house. According to her, there used to have quarrel in her house only occasionally on trivial matters, though, however, in connection with her elder sister's marriage there had taken place a quarrel between the accused and her brother (PW7) in relation to the cash by sale of timber; that in the said quarrel the accused had been treated in the hospital, as his leg got fractured and that

then he was being taken to the hospital by the neighbours and he was hospitalised for two weeks. According to her, on coming back to the house on the date of occurrence, there was no one in her house; that she pushed open the door and entered within the house and then saw that her mother was found tied down on a cot using rope and there was also blood, but, she did not realise as to whether her mother had breathed her last by then. She raised alarm and then her neighbours came over. She identified MO1 plastic rope, used to tie down her mother, as the rope that had been used to tie the goat and MO2 stick, as the stick that was being used by the accused for assistance in walking on his discharge from the hospital. MO3 is identified as the lungi, which, the accused used to wear at house. According to her, the distance to the tailoring shop, where she used to go for learning stitching, is half kilometre from her house.

7. PW7, the son of the accused and the deceased has corroborated the testimony of PW6 on all material aspects. According to him, he had gone for his painting work and was being got down to his house by one Philip and then he saw his mother lying dead on the cot with a rope tied on her neck. He has also stated that prior to the said occurrence, there had taken place a quarrel between himself and his father in connection with sale of timber for the marriage purposes of his sister and in that incident, his father sustained a blow dealt by him and his father was, thus, hospitalised and though his mother did not support him, she did not accompany his father to the hospital and that after the said occurrence, his father was walking with the assistance of MO2 stick. He further stated in cross-examination that it was the neighbours, who took his father to the hospital then.

8. Another daughter of the accused and the deceased is PW8 and she has given evidence that on

the date of occurrence she had gone for computer class and that when she returned at 1 p.m., she knew about the death of her mother and police also had come over. The evidence tendered by PWs 6 to 8 are not assailed as regards their testimony that they were all away from the house at the time of occurrence, they having left the house in the morning on the date of occurrence either for job or for studies. Their evidence that on their return before lunch, their mother was found dead by strangulation, by tying a rope on her neck, is also not assailed. It is not even suggested to them in cross-examination that the accused was not present in the house, when they all left the house in the morning. The accused had nothing to say about the above aspects when questioned, except that he is not guilty.

9. PW1, who has given Exhibit P1 F.I. Statement, is a neighbour of the accused, the deceased and PWs 6 to 8. According to him, on the

date of death of the deceased, he heard an alarm being raised from the house between 9 a.m. and 10 a.m. by the deceased that she is being killed, but he did not go to their house, as it was six months prior thereto that the occurrence of the accused's leg being broken by some one having taken place at their house and he had to take the accused to the hospital even without the assistance of the deceased. But, however, according to PW1, after half to three fourth of an hour therefrom he saw the accused going out of his house and thereafter there was no noise at all from the house and therefore, he went in search of Jose, the eldest son of the accused, but, as he found his house locked, he got the assistance of 6-7 others as well and reached the house of the accused, getting down a jeep and then he found that some people had assembled at the house of the accused and also found the wife of the accused lying dead tied down on a cot with blood fallen on the floor. It is,

thereafter that he went to the police station and gave Exhibit P1 F.I. Statement. He has also stated that then the occupants of the house were the accused, the deceased and their children PWs 6 to 8 and that PW7 George used to go for auto driving and PWs 6 and 8 used to go for studies.

10. The argument advanced by the defence counsel that the conduct of PW1 in not going to the house of the accused on hearing the alarm and not talking anything to the accused while he saw the accused on the road on his way to get down Jose, the eldest son of the accused are strange conduct on the part of PW1 and therefore, his testimony cannot be believed is bereft of any merit, as it can be seen from his testimony that he has no opinion as regards the accused, at whose house there is frequent quarrel taking place. Though PW2, another neighbour had turned hostile, her evidence also shows that in the house of the accused, the deceased and their children (PWs 6 to

8) were also residing; that PW7 goes early in the morning from the house; that she is aware of the accused having had undergone treatment at hospital for fracture of his leg and that she has seen the deceased lying dead with rope tied on to her neck. PWs 3 to 5 have also turned hostile and have not supported the prosecution case. But, all the same, their testimony is of no help to the accused to cast any doubt on the truth of the prosecution case.

11. It is true that there is no direct evidence to establish the guilt in the accused. But, all the same, the presence of the accused along with the deceased in the house after PWs 6 to 8 have left the house in the morning and with none else in the house and raising of alarm by the deceased between 9 a.m and 10 a.m. that she is being killed and the accused leaving the house after half to three fourth of an hour therefrom, established on the testimony of PW1, goes a long

way to establish the guilt in the accused. PW1 is not even suggested to have any animosity towards the accused to implicate him in this grave crime. In fact, he is one who helped the accused, taking him to the hospital, when his leg was broken in a quarrel between himself and his son (PW7) with not even the wife of the accused to accompany him to the hospital. It is the frequent quarrel that takes place in the house of the accused that dissuaded PW1 from going to the house of the accused alone on the date of occurrence on hearing the alarm. But, all the same, he still attempted to get down the eldest son of the accused and as that attempt turned futile, he collected 6-7 persons and has come to the house of the accused, getting down a jeep as well to take anyone to the hospital, if need be. However, by the time he returned with 6-7 persons, the neighbours had already assembled at the house of the accused and the death of the deceased was also by then

confirmed. It is worthy to remember that the appellant/accused has not even attempted to offer any explanation, whether convincing or otherwise, as to how the death of the deceased occurred when himself and the deceased were the only persons in their house at the time when the alarm was raised by the deceased and the accused left the house after half to three fourth of an hour therefrom from that house. The probability of some one else coming to the house of the accused and committing murder of the deceased is not even suggested to exist and that possibility is also very remote. No one else is even suggested to have had any animosity with the deceased. No theft of any valuables also is even suggested to have taken place from that house. In the circumstances, the possibility of anyone having come over to the house for that purpose is also out of question. PW1 has lodged Exhibit P1 F.I. Statement without any delay and he has narrated the events spoken to by him in

the said F.I. Statement itself. The presence of the accused at his house at the time of occurrence is not even faintly disputed. Ever after the accused left his house after the occurrence, he is not even suggested to have come back to his house, though the neighbours assembled at that house, on coming to know of the death of the deceased. On the other hand, he surrendered before police at 7 p.m. on the very same day, as deposed to by PW15, the Investigating Officer. There is no explanation coming forth from the accused as regards this unnatural conduct from his back.

12. MO2 stick and MO3 lungi were being recovered from the house of the accused by PW15, the Investigating Officer under Exhibit P8 mahazar. Though the said recovery cannot be said to be admissible as a discovery of a fact under Section 27 of the Evidence Act, those are identified by PW6, the daughter of the accused respectively as the stick used by the accused for assistance in

walking and as the lungi usually worn by the accused while at house. Exhibit P11 chemical analysis report shows that on a few small areas of MO2 stick presence of thick brown stains were found, which, on examination, was ascertained to be the blood of human origin. Further, on MO3 lungi also, presence of blood was detected, though for want of sufficient quantity, its origin as being human blood could not be ascertained. Presence of human blood on MO2 stick used by the accused for support in walking and presence of blood on MO3 lungi worn by the accused at his house goes a long way as an incriminating circumstance against the accused, as in the normal course, human blood is not expected to be present on MO2 stick and on MO3 lungi, unless the accused, who was dealing with those material objects, was connected with the commission of the crime involved in this case. Similar is the case of presence of blood found on finger impressions of the accused, taken on

cellophane tape by the Investigating Officer.

13. All the circumstances dealt with above were found by the trial court as circumstances which form links in a chain to support the conclusion that within all human probability the crime was committed by the accused and none else, especially when the occurrence has taken place in the house, wherein, only the accused and the deceased were present after PWs 6 to 8 left the house in the morning for their job and studies and he left the house after half to three fourth of an hour of the alarm raised by the deceased, having been heard from his house, all within a span of less than two hours, from 9 a.m. and 10.45 a.m. We see no reason to differ from the unerring conclusion arrived at by the Sessions Judge in the circumstances of the case. The sentence awarded by the court below is also only the lesser of the two sentences prescribed for the offence of murder. This appeal, in the circumstances, is devoid of

merit and deserves only to be dismissed.

In the result, confirming the conviction and the sentence passed by the court below against the appellant/accused, we dismiss this appeal. Communicate a copy of this judgment to the appellant through the Superintendent of the Central Prison concerned.

(J.B.Koshy, Judge)

29th October, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy &
K.P.Balachandran, JJ.

Crl.A.No.987 of 2004

JUDGMENT

29th October, 2007